

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Case No. 2:21-cv-05017-PCK-SIL

----- x
NOE GONZALEZ,

Plaintiff,

-against-

THE CHEESECAKE FACTORY RESTAURANTS,
INC. d/b/a THE CHEESECAKE FACTORY,

Defendant.
----- x

Declaration of Barbara Lewis

I, Barbara J. Lewis, make this declaration under 28 U.S.C. § 1746

1. I have worked for The Cheesecake Factory Restaurants, Inc. d/b/a The Cheesecake Factory (“TCFI”) for over 25 years. I started with TCFI in 1995 as a Restaurant Bookkeeper. In 1997, TCFI promoted me to Director of Accounting and Corporate Operations Support. I served in this position until 2020 when TCFI promoted me to Director of Payroll and in 2023 to Senior Director of Payroll and Accounts Payable. I currently work for TCFI in this position.

2. In 2002 TCFI rolled out their Alternative Dispute Resolution (“ADR”) Program, wherein TCFI and all of its employees mutually agreed to resolve disputes via individual arbitration.

3. Proposed Plaintiff Keith Calvagno worked as a server from March 21, 2008 through August 10, 2022 at the TCFI restaurant located in Lake Grove, New York.

Onboarding At Hire

4. All employees at TCFI restaurants in New York State complete onboarding at the start of their employment. During this onboarding process, employees are provided copies of several important documents, including the Employee Handbook and, beginning in 2013, the long

form version of the ADR Policy and Arbitration Agreement.

5. TCFI ensures that this policy of providing copies of important documents to new hires during onboarding is followed by each of its New York State restaurant locations through a series of monthly self-review audits conducted by each restaurant and annual corporate internal audits. These audits ensure that all newly hired employees receive all onboarding documents, including the Employee Handbook and Arbitration Agreement.

Employee Handbook

6. The TCFI Employee Handbook contains valuable information for employees including current TCFI policies and best practices. The version of the Employee Handbook provided to Noe Gonzalez in 2009 and Keith Calvagno in 2008 contained a two-page acknowledgment form.

7. It was TCFI policy in March 2008 and continues to be TCFI policy to present all new employees with a copy of the most current Employee Handbook, including the acknowledgment pages. In 2008, it was TCFI policy to inform all new hires during the onboarding process that the Arbitration Acknowledgment required mandatory individual arbitration for any disputes that arose. In 2008, it was also TCFI policy to inform onboarding employees that their offer of employment and continued employment was expressly conditioned on them agreeing to the Arbitration Acknowledgment.

8. Calvagno would not have been able to begin his employment and would not have been entered into the TCFI payroll system without receiving his onboarding documents and completing his onboarding paperwork.

Employee Handbook Updates and HotSchedules

9. During Cavagno's employment from 2008-2022, TCFI re-issued the Employee

Handbook—including the Arbitration Acknowledgment—three times. In order to ensure that all employees were made aware of and could access the updated Handbook, a notice of the Handbook update was disseminated through TCFI’s scheduling software, HotSchedules. Employees were further instructed to review a full copy of the Handbook via ScoopsLive or a hard copy from their Manager.

10. HotSchedules is the only method by which TCFI restaurant employees, including Calvagno, can access their schedule. When TCFI disseminated information to employees, including Employee Handbook updates, TCFI created a notification that would appear upon first accessing HotSchedules.

11. Upon opening HotSchedules, the employee would need to read and click through the notification in order to access their schedule. Employees are required to affirmatively click “continue” in order to see any additional messages and then access their schedule and earnings statements.¹ These notifications would, for example, announce an update to the Employee Handbook and would appear as the first screen on HotSchedules over multiple logins to ensure that all employees received the notification. It would be impossible for an employee, including Calvagno, to access his or her schedule or earning statements without seeing and clicking through the home screen notification.

12. Three times during Calvagno’s employment, TCFI placed notifications on the home screen of HotSchedules notifying employees, including Calvagno, of updates to the Employee Handbook and reminding employees the multiple ways they could access the Handbook. These three notifications also encouraged employees to read the Handbook and to

¹ Earnings statements also became available both via HotSchedules and TCFI’s “Self-Service” program in 2020. This was in addition to the method earnings statements had always been furnished to employees

contact their General Manager if they had questions.

13. The Handbook itself reminds employees that it is their “responsibility to read and adhere to the guidelines in all material,” including the Handbook.

14. Further, during the entire period of Calvagno’s employment, TCFI staff participated in a daily staff meeting called “Alignment.” During Alignment, management would convey restaurant information, benefits changes, company information, and celebrations to staff members. Updates to the Employee Handbook were also conveyed during Alignment.

Calvagno Agreement To Arbitrate

15. TCFI presented Calvagno with the Employee Handbook and the Handbook acknowledgment section—including the Arbitration Acknowledgment—at the time of his hire. TCFI also informed Calvagno during his onboarding that his offer of employment and continued employment was expressly conditioned on him agreeing to the Arbitration Acknowledgment. Calvagno would not have been able to begin his employment and would not have been entered into the TCFI payroll system without receiving his onboarding documents and completing his onboarding paperwork.

16. TCFI provided Calvagno with three updates to the Employee Handbook via HotSchedules during his employment. Calvagno could not have accessed his schedule and earnings statements² without seeing the messages from TCFI regarding the updated Handbook and encouraging him to read the Handbook.

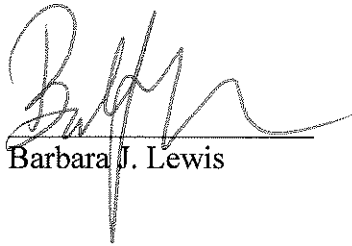
17. Attached to this declaration are true and correct copies of the following documents:

- A. Sample HotSchedules Message related to Employee Handbook updates from 2019;

² Earnings statements became available both via HotSchedules and TCFI’s “Self-Service” program in 2020.

- B. Sample staff Alignment talking points related to Employee Handbook updates from 2019;
- C. Sample staff member communication related to Employee Handbook updates from 2019.
- D. Sample of HotSchedules User Access Records for Keith Calvagno related to Employee Handbook Updates.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON JUNE 30, 2023



Barbara J. Lewis